

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 09-40288
	)	Chapter 7
ERIC LEE ROSE	)	
SSN/ITIN xxx-xx-5403	)	
	)	Adversary No. 10-
Debtor.	)	
	)	
LEE ANN PIERCE, TRUSTEE	)	
	)	COMPLAINT TO AVOID TRANSFER
Plaintiff	)	
	)	
-vs-	)	
	)	
ERIC L. ROSE II	)	
	)	
Defendant.	)	

COMES NOW, Chapter 7 Trustee Lee Ann Pierce and for a complaint against the above-captioned Defendant, states and alleges as follows:

1.

Lee Ann Pierce is the duly qualified and acting Bankruptcy Trustee in the estate of Eric Lee Rose.

2.

This Court has jurisdiction over this adversary proceeding.

3.

This is a core proceeding within the meaning of 28 U.S.C. §157.

4.

Debtor filed a Chapter 7 Bankruptcy on April 21, 2009.

5.

A quitclaim deed dated July 31, 2006 transfers the real property located at 45 Zeliff Avenue in Sherman, South Dakota, legally described as:

Lots 8, 9 and 10 in Block 9 of the Village of Sherman in Minnehaha County, South Dakota, according to the recorded plat thereof

from Debtor, grantee, to Debtor and Defendant, grantors, as joint tenants with right of survivorship and not as tenants in common.

6.

The quitclaim deed was recorded with the Minnehaha County, South Dakota Register of Deeds on August 3, 2006.

7.

The tax assessed value of the real property is \$21,390.00. Debtor testified at his §341 meeting on May 29, 2009 that the fair market value of the property was approximately \$45,000.00.

8.

Defendant did not provide value to Debtor in exchange for Debtor's transfer of his interest in the real property, and therefore Debtor received less than reasonably equivalent value in exchange for the transfer.

9.

Debtor was insolvent at the time of the transfer of his interest in the real property or became insolvent as a result of the transfer.

10.

Debtor intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due at the time of the transfer.

11.

The transfer of Debtor's interest in the real property to Defendant is avoidable under 11 U.S.C. § 544 and SDCL §§ 54-8A-4, 54-8A-5, and 54-8A-9.

WHEREFORE, Plaintiff prays that the Court enter a judgment in favor of the Trustee and against the Defendant avoiding the July 31, 2006 transfer of the above-described real property, and in addition thereto order that Defendant pay Trustee her costs, including the \$250.00 filing fee for this proceeding, and for such other and further relief as the Court deems just and proper.

Dated: July 28, 2010.

/s/ Lee Ann Pierce

LEE ANN PIERCE

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